

Officers, 2019-2020

Arthur J. Parham, Jr.
Chair
Entergy Services, LLC

Robert J. Tuinstra, Jr.
Vice Chair
*E.I. DuPont De Nemours
and Company*

Michael F. Carchia
Secretary & Treasurer
Capital One Services, LLC

Amy Thomas Laub
Immediate Past Chair
Nationwide Insurance Company

Douglas L. Lindholm
President
Council On State Taxation

Directors

Madison J. Barnett
The Coca-Cola Company

Barbara Barton Weiszhaar
HP Inc.

Deborah R. Bierbaum
AT&T Services, Inc.

C. Benjamin Bright
HCA Holdings, Inc.

Paul A. Broman
BP America Inc.

Tony J. Chirico
Medtronic, Inc.

Susan Courson-Smith
Pfizer Inc

Karen DiNuzzo-Wright
Walmart Inc.

Kurt A. Lamp
Amazon.Com

J. Hugh McKinnon
Raytheon Company

Mollie L. Miller
*Fresenius Medical Care
North America*

Rebecca J. Paulsen
U.S. Bancorp

John H. Paraskavas
Exxon Mobil Corporation

Michael R. Raley
VF Corporation

Frances B. Sewell
NextEra Energy, Inc.

Andrew H. Solomon
L3 Technologies, Inc.

Archana Warner
Exelon Corporation

Nikki E. Dobay
Senior Tax Counsel
(202) 484-5221
ndobay@cost.org

March 14, 2019

The Honorable Mark Hass, Chair
The Honorable Cliff Bentz, Vice Chair
Senate Committee on Finance and Revenue
Oregon State Legislature

VIA EMAIL

Re: COST Comments re S.B. 851

Dear Chair Hass, Vice-Chair Bentz, and Committee Members:

I am writing on behalf of the Council On State Taxation (COST) regarding S.B. 851 and the inclusion of global intangible low-taxed income (GILTI) in Oregon's tax base. COST generally opposes the inclusion of GILTI in a state's tax base; however, understanding Oregon is somewhat uniquely situated, we offer the following comments and materials to assist this Committee and legislature in making an informed policy decision regarding this issue.

About COST

COST is a nonprofit trade association based in Washington, DC. COST was formed in 1969 as an advisory committee to the Council of State Chambers of Commerce and today has an independent membership of approximately 550 major corporations engaged in interstate and international business. COST's objective is to preserve and promote the equitable and nondiscriminatory state and local taxation of multijurisdictional business entities.

State Tax Implications of Foreign Source Income, Including Global Intangible Low-Taxed Income (GILTI)

Over the last 30 years, states have generally limited their corporate income tax base to the water's edge (*i.e.*, to only income earned in the U.S.). With federal tax reform, the federal government has moved from the taxation of foreign source income primarily on a "deferred" basis to taxing a limited range of foreign source income, which includes GILTI, primarily on a "current" basis. At the federal level, the focus of the GILTI provision (I.R.C. § 951A) is to include in the federal income tax base "low-taxed" foreign source income – basically income that is taxed in foreign countries at less than 13.125 percent. To achieve this practical outcome the federal government allows a deduction from GILTI of approximately 50 percent (I.R.C. § 250) to achieve a tax rate of 10.5 percent (one-half of the federal statutory rate) on the GILTI income. Finally, a credit for 80 percent of foreign taxes paid on such income is allowed to offset any includable GILTI income at the federal level. It is important to note that at the federal

level, although GILTI is similar to subpart F¹ in some ways, it is not considered a dividend or deemed dividend.

The federal taxation of GILTI is very different than state taxation of GILTI from both a policy and a practical outcome perspective.² First, with the TCJA, Congress is raising \$324 billion over 10 years from the international tax reform provisions (including GILTI) to help pay for \$654 billion over 10 years in other business tax reform cuts. Further, at the federal level a taxpayer can offset a portion of the GILTI income with foreign tax credits. The states, by contrast, do not conform to the federal corporate tax rate cuts, and therefore would have no reason to expand their tax bases to make up for the lost revenue. Further, Oregon (along with most other states) does not allow a taxpayer to offset its taxable income with foreign tax credits. As a result, all of a taxpayer's GILTI income, from both low-taxed and high-taxed countries, would be subject to the Oregon corporate income tax. This would constitute a vast and unprecedented expansion of the state corporate income tax base to previously untaxed foreign source income. Thus, conforming to GILTI would represent a selective and arbitrary conformity that harms a segment of Oregon businesses competing internationally, without advancing any compelling tax policy goal for the State.

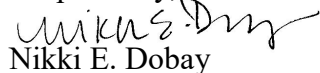
To date, Oregon appears to be one of 13 combined reporting states coupled or potentially coupled to GILTI. Further, three other combined reporting states are coupled or potentially coupled to 10 percent to 30 percent of GILTI; seven separate reporting states are potentially coupled to GILTI, but inclusion may be constitutionally prohibited; 16 states are decoupled from all or virtually all (95 percent) of GILTI; and 6 states have not addressed IRC conformity and/or GILTI coupling specifically.³ Finally, Oregon also appears to be coupled to the I.R.C. § 250 GILTI deduction.

Conclusion

In addition to the above comments, please find attached an article entitled "State Taxation of GILTI: Policy and Constitutional Ramifications" written by Joseph X. Donovan, Karl A. Frieden, Ferdinand S. Hogroian, and Chelsea A. Wood (*State Tax Notes*, October 22, 2018), which discusses several policy issues regarding state conformity to GILTI. As noted above, although COST's general position is to oppose the inclusion of GILTI in the state tax base, we encourage the Legislature to review these comments as well as the attached information to make an informed policy decision as to whether and/or how Oregon should conform to GILTI.

Thank you for your time, and do not hesitate to contact me with any questions or comments.

Respectfully,



Nikki E. Dobay

cc: COST Board of Directors
Douglas L. Lindholm, COST President & Executive Director

¹ Subpart F of the IRC essentially requires immediate recognition by the parent of certain types of income of controlled foreign corporations.

² See Joseph X. Donovan, Karl A. Frieden, Ferdinand S. Hogroian, and Chelsea A. Wood, "State Taxation of GILTI: Policy and Constitutional Ramifications," *State Tax Notes*, October 22, 2018; The Impact of Federal Tax Reform on State Corporate Income Taxes, by Ernst & Young LLP for the State Tax Research Institute, March 2018, available at: <http://cost.org/globalassets/cost/state-taxresources-pdf-pages/coststudies-articles-reports/the-impact-of-federal-tax-reform-on-state-corporateincome-taxes.pdf>.

³ See attached chart.